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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

EASTWOOD COALITION, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents; LARRY BOND et al., Real Parties in Interest and Respondents.	B206893 (Los Angeles County Super. Ct. No. BS108933)

APPEAL from a judgment of the Superior Court of Los Angeles County. James C. Chalfant, Judge. Affirmed.

Richard S. MacNaughton for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Jeri L. Burge, Assistant City Attorney, Tayo A. Popoola and Michael L. Bostrom, Deputy City Attorneys, for Defendants and Respondents.

Jeffer, Mangels, Butler & Marmaro, John M. Bowman and Elizabeth Smagala for Real Parties in Interest and Respondents.

Eastwood Coalition (Eastwood) appeals the denial of its petition for writ of mandate against the City of Los Angeles, its city council planning department, and other agencies of the city.[1] Eastwood challenges the city's approval of a development project and specifically the city's granting of exceptions from the specific plan requirements. Eastwood's appeal raises a narrow procedural issue and does not address the merits of the city's decision.

Eastwood contends the city's Director of Planning had a ministerial duty to advise the developer to seek a specific plan amendment in lieu of processing the application for specific plan exceptions. This contention is based on Los Angeles Municipal Code section 11.5.7, subdivision F.1(b), which states that if an exception "would potentially impact a specific plan policy or a regulation affecting the entire specific plan area or any of its subareas," the Director of Planning "shall advise the applicant . . . to request the City to initiate a specific plan amendment . . . in lieu of processing the application for an exception." We conclude that the determination whether an exception would potentially have an impact described in this section is an adjudicatory decision and that Eastwood has not shown the failure to comply with a ministerial duty. We therefore affirm the judgment.

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[1] We will refer to the respondents named in the petition collectively as the city.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Factual Background*

The Vermont/Western Transit Oriented District Specific Plan (Station Neighborhood Area Plan or SNAP) governs part of the city's Hollywood community. The specific plan imposes land use regulations in addition to those otherwise applicable to the specific plan area and modifies some provisions of the city's planning and zoning ordinances as applicable to the specific plan area. The specific plan area is divided into subareas A through E.

Bond 5555 Hollywood, LLC, and Larry Bond (collectively Bond) proposed the construction of a mixed use development on four lots, including two lots in subarea A and two in subarea C. The specific plan designates subarea A as "Neighborhood Conservation" and subarea C as "Community Center." The proposed development includes ground floor commercial uses and 90 condominium units in a single four-and-five story building that would occupy the four lots. Bond submitted an application to the city's planning department in June 2006, seeking several exceptions from the specific plan and variances. Bond also submitted a separate application for a tentative map in connection with the proposed development, seeking to merge the four lots and subdivide them by creating air space lots.

The city's Central Area Planning Commission appointed a hearing officer who conducted a public hearing on the application in September 2006. The commission, at a meeting in November 2006, approved several exceptions from the specific plan and variances, subject to certain conditions. Among the conditions of approval was

a paragraph stating that no more than 43 residential units would be permitted in subarea A, no more than 47 residential units would be permitted in subarea C, and all commercial uses would be in subarea C. The paragraph stated further: "In the event that a dwelling unit is located in two Subareas, the Subarea within which more than 50 percent of the unit is located shall be considered the regulating Subarea."

Eastwood appealed the decision to the city council. The city council's Planning and Land Use Management Committee conducted a public hearing on the appeal in April 2007. The committee recommended that the city council deny the appeals and approve the project subject to modified conditions. The condition language quoted above remained the same. The city council at a meeting in April 2007 adopted the findings and conditions of approval recommended by the committee, approved the specific plan exceptions, granted other requested entitlements, and certified an environmental impact report for the project. The city council found that the project would "further the intent and purpose of the SNAP," and that upon approval of the exceptions, the project would "comply with all applicable provisions of the Zoning Code and the Vermont Western Station Neighborhood Area Plan."

2. *Trial Court Proceedings*

Eastwood filed a petition for writ of mandate in May 2007. In the operative second amended petition filed in September 2007, Eastwood alleges that the city failed to give proper notices and hold hearings required by law in connection with the approved exceptions. Eastwood alleges, among other things, that the notices given did not disclose that the exceptions, if approved, "would change Subarea A regulations into

Subarea C regulations," and that the city therefore was required to "initiate a specific plan amendment . . . in lieu of processing the application for exception." Eastwood alleges one count for ordinary mandamus (Code Civ. Proc., § 1085), seeking to compel the city to give the notices and conduct the hearings required by law. Eastwood also alleges a second count for violation of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

The trial court granted Bond's motion to dismiss the second count because of Eastwood's failure to timely request a hearing on the CEQA count (Pub. Resources Code, § 21167.4, subd. (a)). Eastwood then voluntarily dismissed the second count against the city as well.

Eastwood asserted that it was only challenging the notices given and was not challenging the determinations made by the city. Eastwood maintained that no administrative record was necessary and did not prepare an administrative record. Eastwood argued among other things that mixed use projects were not allowed in subarea A and that to allow a mixed use project in subarea A would affect all of subarea A. Eastwood argued that a specific plan amendment therefore was required pursuant to Los Angeles Municipal Code section 11.5.7, subdivision F.1(b), and that the city had failed to advise Bond to seek such an amendment in lieu of processing the application for specific plan exceptions, as required.

The trial court rendered a decision on the petition after a hearing on the merits in December 2007. It found that there was a deficiency in the timing of a hearing notice but the deficiency was not prejudicial, and that Eastwood had shown no deficiency in

the content of the notices. The court concluded that whether the notices were required to state that Bond was seeking an amendment to the specific plan depended on whether a specific plan amendment was required, and that a review of the city's determination that no amendment was required would require an administrative record, which had not be provided. The court therefore denied the petition.

Eastwood moved for reconsideration of the denial of its petition. Eastwood argued that by authorizing a mixed use development on the subarea A portion of the property without amending the specific plan, the city had approved in an ad hoc and improper fashion a land use that was not authorized by the specific plan, and that the approval was void. Eastwood argued that a recent opinion, *Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, supported its position. Eastwood argued that the Director of Planning had a ministerial duty under Los Angeles Municipal Code section 11.5.7, subdivision F.1(b) to advise Bond to seek a specific plan amendment in lieu of processing the application for exceptions. Eastwood argued further that the city's decision could be reviewed by ordinary mandamus and that no administrative record was necessary.

The court granted reconsideration, vacated its denial of the petition, and reconsidered its prior ruling. Upon reconsideration, the court concluded that it could not review the city's determination that no specific plan amendment was required without an administrative record. The court concluded further, as a matter of law, that neither the city's zoning ordinances nor the specific plan prohibited mixed use

developments in subarea A. The court entered a judgment denying the petition. Eastwood timely appealed the judgment.

CONTENTIONS

Eastwood contends the specific plan does not authorize mixed use projects in subarea A, so the proposed project necessarily would potentially impact subarea A as a whole within the meaning of Los Angeles Municipal Code section 11.5.7, subdivision F.1(b). Eastwood contends the city therefore had a ministerial duty to refrain from processing the application for special plan exceptions and advise Bond to request a special plan amendment instead, and that duty is enforceable by ordinary mandamus.

DISCUSSION

A writ of mandate may issue to compel a public agency or officer to perform a ministerial duty. (Code Civ. Proc., § 1085; *City of Dinaba v. County of Tulare* (2007) 41 Cal.4th 859, 868.) This is known as ordinary or traditional mandamus. (*American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 539; *Corrales v. Bradstreet* (2007) 153 Cal.App.4th 33, 47.) A ministerial duty is an act that is required to be performed in a prescribed manner without the exercise of any discretion or judgment. (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 593.) If the agency or officer must exercise discretion or judgment in deciding whether or how to act under the circumstances, the decision is not ministerial. (*Hutchinson v. City of Sacramento* (1993) 17 Cal.App.4th 791,796.) A writ of mandate will not issue to control the exercise of discretion or compel an agency or

officer to exercise discretion in a particular manner. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.)

The answer to the question whether Los Angeles Municipal Code section 11.5.7, subdivision F.1(b) imposed a ministerial duty on the Director of Planning depends on our construction of that provision. Accordingly, our review is de novo. (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 499, 502.)

We construe a local ordinance using the same rules of construction applicable to statutes. (*Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 290.) We give the words of the enactment their ordinary and usual meaning and construe them in the context of the enactment as a whole and the entire scheme of law of which it is a part. (*State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043.) If the language is clear and a literal construction would not result in absurd consequences that the Legislature did not intend, the plain meaning governs. (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.)

Los Angeles Municipal Code section 11.5.7 states that the Area Planning Commission has the initial decisionmaking authority to grant an exception from special plan regulations, and that the commission must hold an evidentiary hearing. (*Id.*, subd. F.1.) It states that in granting an exception, the commission must impose conditions necessary to remedy any disparity of privilege or to protect public health, safety, or welfare and assure compliance with the general plan objectives and the

purpose and intent of the specific plan. (*Id.*, subd. F.1(a).) Subdivision F.1(b) then states:

"If an application for an exception would potentially impact a specific plan policy or a regulation affecting the entire specific plan area or any of its subareas, the Director [of Planning] shall advise the applicant, prior to the application being deemed complete, to request the City to initiate a specific plan amendment pursuant to Subsection G in lieu of processing the application for an exception."

Thus, before an application for a specific plan exception is deemed complete and before the Area Planning Commission Acts on the application, the Director of Planning must determine whether granting an exception "would potentially impact a specific plan policy or a regulation affecting the entire specific plan area or any of its subareas." (L.A. Mun. Code, 11.5.7, subd. F.1(b).) If the director determines that there is a potential for such an impact, the director must advise the applicant to seek a specific plan amendment in lieu of processing the application for an exception.

In our view, the determination whether there is a potential for such an impact requires the exercise of discretion and judgment and is not merely a ministerial act. The determination depends on consideration of the special plan policies and the purposes of the specific plan regulations. The mere fact that an exception would authorize something otherwise not permissible under the specific plan, as would appear to be the case for any exception, does not compel the conclusion that the exception would impact a specific plan policy or a regulation affecting the entire specific plan area or any of its

subareas. We conclude that Eastwood has shown no ministerial duty and no basis for ordinary mandamus.

Eastwood does not challenge the merits of the final administrative decision approving the specific plan exceptions or the city council's findings that, upon that approval, the project is consistent with the purposes of the specific plan and complies with the applicable zoning ordinances, so we do not address those questions.

DISPOSITION

The judgment is affirmed. Respondents are entitled to recover their costs on appeal.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.